

8/20/96
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UNITES STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

_____)
_____)
In the Matter of _____)
Health Care Products, Inc. _____)
Respondent _____)

FIFRA Docket No. 93-H-02F

_____)
_____)
In the Matter of _____)
Celltech Media, Inc. aka _____)
Health Care Products, Inc. _____)
Through its Agent, _____)
Meditox, Inc. _____)
Respondent _____)

FIFRA Docket No. 95-H-04

RULINGS ON MOTIONS
and
ORDER SCHEDULING HEARING

Respondent's Motion to Reconsider Ruling on Discovery

Respondent has moved for reconsideration of my Order of June 18, 1996, which denied Respondent's motion for additional discovery. That motion was denied on the grounds that Respondent had not first sought such additional discovery voluntarily as directed, and had not supported the motion for additional discovery as required by 40 CFR §22.19(f). Complainant has filed a brief in opposition to Respondent's motion for reconsideration.

I am not going to micro-analyze the parties' positions concerning their understanding of what constitutes voluntary discovery, or the appropriateness of their prior responses. The hearing in this matter is now scheduled for January 1997, allowing ample time for discovery. Simply in the interest of expediting this proceeding, another discovery period will be permitted.

Any motions for further discovery must be filed by September 25, 1996, in accord with 40 CFR §22.19(f). In order to meet the requirement of §22.19(f)(ii) that the information sought is not otherwise available, the movant must show that the information was requested voluntarily, but not provided. I expect both parties to cooperate voluntarily to the extent of mutually disclosing reasonably available data and documents relating to the efficacy testing done on WipeOut. Any responses to motions for further discovery will follow the practice provided in 40 CFR §22.16.

REC'D
EPA HEARING
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Complainant's Motion to Amend the Complaints

In my Orders of June 13, 1996, I denied Complainant's Motion to Recaption these actions to substitute the current name of the company that owns the WipeOut registration -- Smartel Communications, Inc. ("Smartel"). Respondent has stated that the company formerly known as Health Care Products, Inc. ("HCP") has changed its name to Smartel, but that Smartel may not be liable for the alleged violations. The denial was without prejudice to reframing the motion as one to amend the Complaints.

The Complainant's instant Motion to Amend Complaints, dated July 3, 1996, however, amounts to no more than a restatement of its earlier motion to recaption. It lacks the chief component of a motion to amend a complaint -- the proposed amended complaint. The purpose in allowing the filing of such a motion was stated in the June 13, 1996 Orders (p. 31) to "force the Respondent to directly respond to allegations concerning the effect of the name change, and its liability as Smartel." Respondent intimates in its opposition to this motion that there is more to this issue than a simple name change. Simply changing the name in the caption would not shed light on this issue, and would result in the creation of inconsistencies in the actual Complaints.

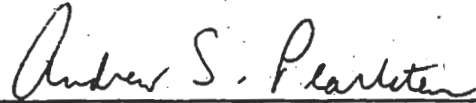
Therefore, Complainant's Motion to Amend Complaints is denied. I do not believe it is in any party's interest to go ahead with a hearing where there is doubt as to the identity or potential ultimate liability of the Respondent. Thus, the denial of this motion will again be without prejudice. Complainant must file any renewed motion to amend the complaints no later than September 19, 1996. Any responses will be governed by 40 CFR §22.16.

Order Scheduling Hearing

Efforts to find a mutually acceptable two-week period for the hearing in October, November, or early December, 1996, were unavailing.

Therefore, the hearing in this matter will be held beginning at 9:30 A.M. on Tuesday, January 7, 1997, at a location to be determined in either Newark or Princeton, New Jersey. The hearing will continue day to day through Friday, January 10, then resume Monday, January 13 and continue through Friday, January 17, 1997. Depending on the progress of the hearing during the first week, the hearing may resume the second week on Tuesday, January 14, instead of Monday, January 13, 1997.

After the Hearing Clerk makes the appropriate arrangements, the parties will be advised of the exact location and of other hearing procedures.



Andrew S. Pearlstein
Administrative Law Judge

Dated: August 20, 1996
Washington, D.C.

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Ruling On Motions and Order Scheduling Hearing, was filed in re Health Care Products, Inc., FIFRA Docket No. 93-H-02F; Celltech Media, Inc., FIFRA Docket No. 95-H-04; and exact copies of the same were mailed to the following:

(Interoffice)

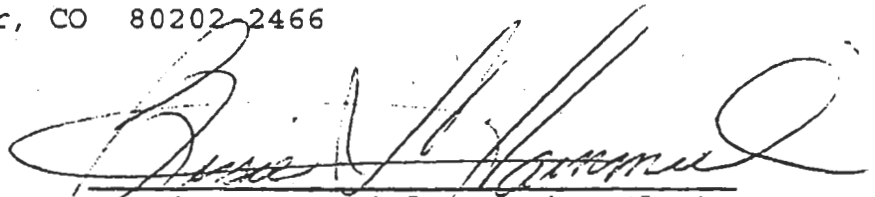
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Dated: August 20, 1996